

TO BE RESCINDED

5703-7-16

Personal income tax: determination of resident status.

- (A) The following factors shall not be considered in making a determination of an individual's domicile under division (B), (C) or (D) of section 5747.24 of the Revised Code:
- (1) The location of financial institutions in which the individual or the individual's spouse have any accounts, including, but not limited to, checking, savings, certificates of deposit, or individual retirement accounts.
 - (2) The location of issuers of credit cards to the individual or the individual's spouse or any other persons making installment loans to the individual or the individual's spouse.
 - (3) The location of institutional lenders which have made loans to or loans which are guaranteed by the individual or the individual's spouse.
 - (4) The location of investment facilities, brokerage firms, realtors, financial advisors or consultants used by the individual or the individual's spouse.
 - (5) The location of either the insurance company that issued or the insurance agent that sold any policy of insurance to the individual or the individual's spouse including, but not limited to, life, health, disability, automobile, or homeowner's insurance.
 - (6) The location of law firms, accounting firms, and similar professionals utilized by the individual or the individual's spouse for legal, tax, accounting, financial, or retirement services.
 - (7) The location of physicians, dentists, osteopaths, optometrists, or other health care providers, or veterinarians utilized by the individual or the individual's spouse.
 - (8) The location of organizations described in section 501(c) of the Internal Revenue Code, except organizations described in paragraphs (2), (7), and (10) of that section, to which the individual or the individual's spouse make contributions or other payments or in which they participate as a congregant, member, board member, committee member, adviser, or consultant provided that participation does not exceed attendance at more than twelve meetings or functions of any one such organization during a calendar year.
 - (9) The location of funeral facilities or the burial plot of the individual or the individual's spouse.

- (10) The location of business ventures or business entities in which the individual or the individual's spouse hold board membership unless the individual or the individual's spouse exercise significant control, either individually or jointly, over the affairs of the entity. An individual or individual's spouse exercises significant control, either jointly or individually, over the affairs of a corporation if he or she owns more than five percent of the stock in or five percent of the value of such corporation including constructive ownership as defined in section 1563(e) of the Internal Revenue Code. An individual or individual's spouse exercises significant control, either individually or jointly, over the affairs of a partnership or limited liability company or other business entity or business venture if he or she owns more than a five percent interest in the capital or profits of the partnership, limited liability company, or other business entity or business venture applying constructive ownership principles parallel to those in section 1563(e) of the Internal Revenue Code.
- (11) The location, place of business, or place of organization or incorporation of a corporation, partnership, limited liability company, or other business entity or business venture in which the individual or the individual's spouse is a shareholder or limited partner unless the individual or the individual's spouse exercises significant control, either individually or jointly, over the affairs of the corporation, partnership, limited liability company, or other business entity or business venture as defined in paragraph (A)(10) of this rule.
- (12) The recitation of residency or domicile in a will, trust, or other estate planning document.
- (13) The location of the individual's friends, dependents as defined in section 152 of the Internal Revenue Code, and family members other than his or her spouse, if not legally separated from his or her spouse under a decree of divorce or separate maintenance as provided in section 7703(a)(2) of the Internal Revenue Code.
- (14) The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, unless those dependents pay tuition at that educational institution based on the residency of the individual or the individual's spouse in the state where the educational institution is located.
- (15) The location of trustees, executors, guardians, or other fiduciaries named in estate planning documents of the individual or the individual's spouse.
- (16) The location of a business at which the individual or the individual's spouse makes purchases of tangible personal property.

- (17) The location where the individual married.
 - (18) The location or identity of recipients of political contributions made by the individual or the individual's spouse.
- (B) The following factors may be considered in making a determination of an individual's domicile under division (B), (C) or (D) of section 5747.24 of the Revised Code:
- (1) The number of contact periods (determined under paragraph (C) of this rule) which the individual has in Ohio.
 - (2) The individual's activities in tax years other than the tax year or years at issue.
 - (3) Any other fact the tax commissioner deems relevant, excepting those set forth in paragraph (A) of this rule.
- (C)
- (1) If the tax commissioner challenges the number of contact periods an individual claims to have in this state during a taxable year, the individual bears the burden of proof to verify such number, by a preponderance of the evidence. An individual challenged by the tax commissioner is presumed to have a contact period in this state for any period for which he or she does not prove by a preponderance of the evidence that he or she had no such contact period.
 - (2) An individual can support his or her claim of the number of contact periods in this state by oral or written statements or by writings or recordings. The absence of writings or recordings shall not prevent the individual from supporting his or her claims of the number of contact periods and meeting the individual's burden of proof, but such evidence shall be subject to review for veracity and credibility for determining whether the individual has met the burden of proof.
 - (3) The tax commissioner can request that any statement offered by the individual be made under penalty of perjury, and any such statement which the individual cannot or will not make under penalty of perjury shall be given no weight and shall not be considered by the tax commissioner as evidence which would otherwise allow the individual to meet or help meet the individual's burden of proof.
- (D) If the tax commissioner challenges the number of contact periods an individual claims to have in this state during the taxable year, the type of writings or recordings that an individual can submit to support a claim that he or she did not have a contact period or contact periods in this state includes, but are not limited to, the following:

- (1) Credit card or cash receipts;
- (2) Personal diaries, calendars or expense reports for business travel;
- (3) Written statements of the individual or others having knowledge of the facts;
- (4) Mail forwarding;
- (5) Transportation tickets or receipts, travel vouchers, logs of airplanes, yachts, or other means of transportation;
- (6) Personal checks;
- (7) Payroll records;
- (8) Evidence of use of club facilities;
- (9) Utility shut-off, disconnect statements, or bills;
- (10) Photographs and videotape;
- (11) Health care practitioner statements;
- (12) Attendance records of schools;
- (13) Minutes of meetings of any business or other organization;
- (14) Voting records and other public records;
- (15) Armed services records; and
- (16) Any other writings or recordings tending to show the physical whereabouts of the individual.

(E) As used in this rule, "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

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CERTIFIED ELECTRONICALLY

Certification

08/17/2021

Date

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